

<sup>2</sup> 5 U.S.C. § 8101 *et seq.*

## **ISSUE**

The issue is whether appellant met her burden of proof to establish left shoulder and arm conditions causally related to the accepted November 3, 2014 employment incident.

## **FACTUAL HISTORY**

On November 5, 2014 appellant, then a 33-year-old practical nurse, filed a traumatic injury claim (Form CA-1) alleging that, on November 3, 2014, she sustained left shoulder, arm, and hand injuries when she walked into an empty cavi wipe holder that was attached to a wall in the dining room of the employing establishment. She explained that there was very little room to walk because residents were eating in the entry way. Appellant first received medical care on the date of injury, stopped work on November 4, 2014, and did not return.

On the date of injury, the employing establishment issued appellant a properly completed authorization for examination (Form CA-16) which indicated that she was authorized to seek medical treatment for her left shoulder strain from the employment incident. In an accompanying December 9, 2014 attending physician's report, Dr. Andrew C. Hilburger, a Board-certified neurologist, reported that she walked into a dispenser mounted on the wall, striking her left shoulder. He first treated her on November 12, 2014 and noted no history of a preexisting injury. Dr. Hilburger diagnosed left shoulder trauma and reflex sympathetic dystrophy. He checked a box marked "yes" when asked if the condition was caused or aggravated by the employment activity described. Dr. Hilburger further determined that appellant was disabled from November 3 through December 17, 2014.

Urgent Care discharge instructions dated November 3, 2014 noted that appellant was treated by Dr. Allen Barcomb, Board-certified in family practice, for a deep bruise contusion. Appellant was discharged that same date and released to work on November 4, 2014.

In medical reports dated November 12, 2014 through February 20, 2015, Dr. Hilburger reported that appellant was evaluated for left arm and shoulder numbness which began on November 3, 2014. Appellant was walking down a hallway at the employing establishment when she walked into a dispenser that was mounted on the wall, striking her left shoulder. She immediately experienced pain in her arm and left shoulder, which developed into numbness, causing her to seek urgent care treatment later that date. Dr. Hilburger noted no prior history of injury to neck and shoulder. He diagnosed joint pain in shoulder region, brachial neuritis or radiculitis, and reflex sympathetic dystrophy of the upper limb. Dr. Hilburger requested authorization for an electromyography (EMG) and nerve conduction velocity (NCV) study of the left upper extremity, as well as a magnetic resonance imaging (MRI) scan of the brachial plexus and/or shoulder.

By development letter dated March 11, 2015, OWCP notified appellant that her claim was initially administratively handled to allow medical payments, as it appeared to involve a minor injury resulting in minimal or no lost time from work. However, the merits of her claim had not been formally considered and her claim was being reopened for consideration of the merits because the medical bills had exceeded \$1,500.00. OWCP informed appellant that the evidence of record was insufficient to establish her traumatic injury claim. Appellant was

advised of the medical and factual evidence needed and afforded her 30 days to submit the additional evidence.

In a January 20, 2015 medical report, Dr. Hilburger diagnosed joint pain in her shoulder region and brachial neuritis or radiculitis.

By decision dated April 13, 2015, OWCP denied appellant's claim, finding that the evidence of record failed to establish that her diagnosed conditions were causally related to the accepted November 3, 2014 employment incident.

On April 22, 2015 appellant requested review of the written record before an OWCP hearing representative. In an accompanying narrative statement, she argued that OWCP failed to respond to Dr. Hilburger's request for authorization of EMG/NCV and MRI scan testing. Appellant further argued that her physician provided a firm medical diagnosis establishing a work-related injury.

In support of her claim, appellant submitted medical reports dated April 22 and 27, 2015 from Dr. Hilburger. In his April 22, 2015 report, Dr. Hilburger reported that he first evaluated her on November 12, 2014. He described the employment incident and noted that appellant complained of severe pain in her shoulder, arm, and hand, as well as numbness in her hands. Dr. Hilburger reported that his working diagnosis was traction injury to the cervical spine roots and brachial plexus. He explained that there had not been any diagnostic testing authorized to provide a more definitive diagnosis. However, Dr. Hilburger believed that appellant's symptoms were consistent with the mechanism of injury.

In an April 23, 2015 attending physician's report (Form CA-20), Dr. Wayne Ortiz, Board-certified in internal medicine, reported that on November 3, 2014 appellant walked into a dining room and hit her left shoulder on an empty cavi wipe, causing immediate pain followed by numbness. He diagnosed reflex sympathetic dystrophy of the left shoulder/arm and checked a box marked "yes" when asked whether the condition was caused or aggravated by the employment incident, noting no previous injury reported to the left side of body.

By decision dated October 22, 2015, an OWCP hearing representative affirmed the April 13, 2015 decision, finding that the evidence of record failed to establish that her diagnosed conditions were causally related to the accepted November 3, 2014 employment incident.

On July 1, 2016 appellant, through counsel, requested reconsideration of the October 22, 2015 decision. Counsel noted submission of Dr. Hilburger's January 19, 2016 report in support of appellant's traumatic injury claim.

In a January 19, 2016 report, Dr. Hilburger noted that appellant was walking and struck her shoulder on a dispenser that was attached to a wall, resulting in her symptoms. He opined that this injury was the direct cause of the symptoms she was experiencing. Dr. Hilburger noted that appellant denied any type of other injury and did not appear to have any other activities that would lead to her symptoms.

By decision dated April 19, 2017, OWCP affirmed the October 22, 2015 decision, finding that the evidence of record failed to establish that appellant's diagnosed conditions were causally related to the accepted November 3, 2014 employment incident.

### **LEGAL PRECEDENT**

An employee seeking benefits under FECA<sup>3</sup> has the burden of proof to establish the essential elements of his or her claim, including the fact that the individual is an employee of the United States within the meaning of FECA, that the claim was filed within the applicable time limitation, that an injury was sustained while in the performance of duty as alleged, and that any disability or specific condition for which compensation is claimed is causally related to the employment injury.<sup>4</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated on a traumatic injury or an occupational disease.<sup>5</sup>

In order to determine whether an employee actually sustained an injury in the performance of duty, OWCP begins with an analysis of whether fact of injury has been established. Generally, fact of injury consists of two components which must be considered in conjunction with one another. The first component to be established is that the employee actually experienced the employment incident which is alleged to have occurred.<sup>6</sup> The second component is whether the employment incident caused a personal injury and generally can be established only by medical evidence.

To establish causal relationship between the condition, as well as any attendant disability claimed and the employment event or incident, the employee must submit rationalized medical opinion evidence supporting such causal relationship.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty, and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant. This medical opinion must include an accurate history of the employee's employment injury and must explain how the condition is related to the injury. The weight of medical evidence is determined by its reliability, its probative value, its convincing quality, the care of analysis manifested, and the medical rationale expressed in support of the physician's opinion.<sup>8</sup>

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<sup>3</sup> *Id.*

<sup>4</sup> Gary J. Watling, 52 ECAB 278 (2001); Elaine Pendleton, 40 ECAB 1143, 1154 (1989).

<sup>5</sup> Michael E. Smith, 50 ECAB 313 (1999).

<sup>6</sup> Elaine Pendleton, *supra* note 4 at 1143 (1989).

<sup>7</sup> See 20 C.F.R. § 10.110(a); John M. Tornello, 35 ECAB 234 (1983).

<sup>8</sup> James Mack, 43 ECAB 321 (1991).

## ANALYSIS

OWCP accepted that the November 3, 2014 employment incident occurred as alleged. The issue is whether appellant has established that the accepted incident caused or aggravated her diagnosed left shoulder and arm conditions.

The Board finds that appellant has not submitted sufficient medical evidence to support that her diagnosed left shoulder and arm conditions were causally related to the accepted November 3, 2014 employment incident.<sup>9</sup>

On the date of the alleged injury, appellant visited an urgent care facility for treatment of her left shoulder. She was seen by Dr. Barcomb. While the discharge instructions provide support for immediate treatment, the documents failed to provide a comprehensive report from Dr. Barcomb noting a firm medical diagnosis and the cause of her condition. Consequently, this document is of no probative value and does not establish her traumatic injury claim.<sup>10</sup>

The April 23, 2015 Form CA-20 from Dr. Ortiz is also insufficient to support appellant's claim. He described the November 3, 2014 employment incident and diagnosed reflex sympathetic dystrophy of the left shoulder/arm. Although Dr. Ortiz checked a box marked "yes," when asked if the diagnosis was a result of the employment incident, the Board has held that a report that addresses causal relationship with a checkmark, without medical rationale explaining how the work incident caused the alleged injury, is of diminished probative value and insufficient to establish causal relationship.<sup>11</sup> Moreover, his rationale was vague, only generally indicating that appellant had no prior injuries to the left side of her body without an explanation pertaining to the mechanism of injury. As such, Dr. Ortiz' report is insufficient to meet appellant's burden of proof.<sup>12</sup>

In medical reports dated November 12, 2014 through January 19, 2016, Dr. Hilburger reported that on November 3, 2014 appellant walked into a wall dispenser at the employing establishment and injured her left shoulder. He diagnosed joint pain in shoulder region, brachial neuritis or radiculitis, and reflex sympathetic dystrophy of the upper limb. The Board finds that the medical reports of Dr. Hilburger are not well rationalized. Dr. Hilburger opined that appellant's injuries were caused by the employment incident because her symptoms were consistent with the mechanism of injury.<sup>13</sup> He supported for his conclusion by noting that she had no prior left shoulder injury. The Board has held, however, that an opinion that a condition is causally related because the employee was asymptomatic before the incident is insufficient, without adequate rationale, to establish causal relationship.<sup>14</sup> While Dr. Hilburger opined that

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<sup>9</sup> See *Robert Broome*, 55 ECAB 339 (2004).

<sup>10</sup> See *Sheila A. Johnson*, 46 ECAB 323, 327 (1994); see *Merton J. Sills*, 39 ECAB 572, 575 (1988).

<sup>11</sup> See *Calvin E. King, Jr.*, 51 ECAB 394 (2000); see also *Frederick E. Howard, Jr.*, 41 ECAB 843 (1990).

<sup>12</sup> See *Michael R. Shaffer*, 55 ECAB 339 (2004).

<sup>13</sup> *T.M.*, Docket No. 08-0975 (issued February 6, 2009); *Michael S. Mina*, 57 ECAB 379 (2006).

<sup>14</sup> *M.R.*, Docket No. 14-0011 (issued August 27, 2014).

appellant's conditions were work related, he failed to provide a rationalized opinion explaining how walking into a wall dispenser would have caused left shoulder brachial neuritis or radiculitis. Medical reports without adequate rationale on causal relationship are of diminished probative value and do not meet an employee's burden of proof.<sup>15</sup> Without explaining how physiologically the movements involved in the employment incident caused or contributed to the diagnosed condition, Dr. Hilburger's opinion is of limited probative value and therefore insufficient to meet appellant's burden of proof.<sup>16</sup>

An award of compensation may not be based on surmise, conjecture, speculation, or on the employee's own belief of causal relation.<sup>17</sup> Appellant's honest belief that the November 3, 2014 employment incident caused her injury, however, sincerely held, does not constitute the medical evidence necessary to establish causal relationship.<sup>18</sup>

The record lacks rationalized medical evidence establishing causal relationship between the November 3, 2014 employment incident and appellant's diagnosed left shoulder and arm conditions. Thus, appellant has failed to meet her burden of proof.<sup>19</sup>

Appellant may submit additional evidence, together with a written request for reconsideration, to OWCP within one year of the Board's merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

### **CONCLUSION**

The Board finds that appellant has not met her burden of proof to establish left shoulder and arm conditions causally related to the accepted November 3, 2014 employment incident.

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<sup>15</sup> *Ceferino L. Gonzales*, 32 ECAB 1591 (1981).

<sup>16</sup> See *L.M.*, Docket No. 14-0973 (issued August 25, 2014); *R.G.*, Docket No. 14-113 (issued April 25, 2014); *K.M.*, Docket No. 13-1459 (issued December 5, 2013); *A.J.*, Docket No. 12-0548 (issued November 16, 2012).

<sup>17</sup> *D.D.*, 57 ECAB 734 (2006).

<sup>18</sup> See *J.S.*, Docket No. 17-0507 (issued August 11, 2017).

<sup>19</sup> The record contains a Form CA-16 signed by the employing establishment official on November 3, 2014 for treatment with Dr. Hilburger. When the employing establishment properly executes a Form CA-16 which authorizes medical treatment as a result of an employee's claim for an employment-related injury, the CA-16 form creates a contractual obligation, which does not involve the employee directly, to pay for the cost of the examination or treatment regardless of the action taken on the claim. The period for which treatment is authorized by a Form CA-16 is limited to 60 days from the date of issuance, unless terminated earlier by OWCP. See 20 C.F.R. § 10.300(c); *Tracy P. Spillane*, 54 ECAB 608 (2003). The record is silent as to whether OWCP paid for the cost of appellant's examination or treatment for the period noted on the form.

**ORDER**

**IT IS HEREBY ORDERED THAT** the Office of Workers' Compensation Programs' decision dated April 19, 2017 is affirmed.

Issued: January 24, 2018  
Washington, DC

Christopher J. Godfrey, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board